

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 409.2.C(1)...

to waive the requirement that all off-street parking facilities, including drives, be screened from off-site residential or institutional premises.

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty.)

"The Owner has incurred extreme hardship and expense in maintaining a suitable fence around the subject property as required by Baltimore County Zoning Ordinances. Following complaints in the Fall of 1980, the existing fence was removed and approximately 900 lin. feet of new stockade fencing was installed. At this time, most of this new fence has been vandalized and repair or replacement would again subject the Owner to substantial costs."

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: COOK UNITED, INC. (Type or Print Name)

Signature: [Signature] Vice President

Address: [Address] City and State: [City and State]

City and State: [City and State]

Attorney for Petitioner: Rob. Ross Hendrickson, Esq. (Type or Print Name)

Signature: [Signature] Address: [Address] City and State: [City and State]

9 West Mulberry Street Baltimore, MD 21201

Attorney's Telephone No.: 301/727-5770

ORDERED By The Zoning Commissioner of Baltimore County, this 26th day of January, 1982.

that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 25th day of March, 1982, at 9:30 o'clock A.M.

[Signature] Zoning Commissioner of Baltimore County.

(over)

PETITION FOR ZONING VARIANCE

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Signature: [Signature] Vice President

Address: [Address] City and State: [City and State]

City and State: [City and State]

Attorney for Petitioner: Rob. Ross Hendrickson, Esq. (Type or Print Name)

Signature: [Signature] Address: [Address] City and State: [City and State]

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Signature: [Signature] Vice President

Address: [Address] City and State: [City and State]

City and State: [City and State]

Attorney for Petitioner: Rob. Ross Hendrickson, Esq. (Type or Print Name)

Signature: [Signature] Address: [Address] City and State: [City and State]

9 West Mulberry Street Baltimore, MD 21201

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[Signature] Zoning Commissioner of Baltimore County.

(over)

RE: PETITION FOR VARIANCE : BEFORE THE ZONING COMMISSIONER
NW corner of Wise Ave. & Lynch Rd., 12th District : OF BALTIMORE COUNTY

COOK UNITED, INC., Petitioner : Case No. 82-207-A

ORDER TO ENTER APPEARANCE

Mr. Commissioner:

Pursuant to the authority contained in Section 524, I of the Baltimore County Charter, I hereby enter my appearance in this proceeding. You are requested to notify me of any hearing date or dates which may be now or hereafter designated therefor, and of the passage of any preliminary or final Order in connection therewith.

Peter Max Zimmerman John W. Hession, III
Peter Max Zimmerman John W. Hession, III
Deputy People's Counsel People's Counsel for Baltimore County
Rm. 223, Court House
Towson, Maryland 21204
494-2188

I HEREBY CERTIFY that on this 15th day of March, 1982, a copy of the foregoing Order was mailed to Rob Ross Hendrickson, Esquire, Sauerwein, Boyd, Decker & Leven, 9 W. Mulberry Street, Baltimore, Maryland 21201, Attorney for Petitioner.

[Signature] John W. Hession, III
John W. Hession, III

RE: PETITION FOR VARIANCE : BEFORE THE
NW/corner of Wise Ave. & Lynch Rd. - 12th Election District : DEPUTY ZONING
Cook United, Inc. - Petitioner : COMMISSIONER
NO. 82-207-A (Item No. 128) :
: OF
: BALTIMORE COUNTY

Pursuant to the advertisement, posting of property and following presentation of the petitioner's case at the public hearing, testimony by Angelo D'Anna, President, Mars Super Markets, Inc., revealed that a portion of the subject property is owned in fee by Lynn Holding Company, as settled on March 1, 1982, and not by the petitioner. This portion is proposed to be occupied by a Mars Super Market.

Without reviewing the testimony further in detail but based on all testimony presented, it is the opinion of the Deputy Zoning Commissioner that the subject petition was incorrectly advertised as to ownership and, therefore,

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 8th day of September, 1982, that the herein Petition for Variance to waive the screening requirements for the existing parking area is hereby DISMISSED.

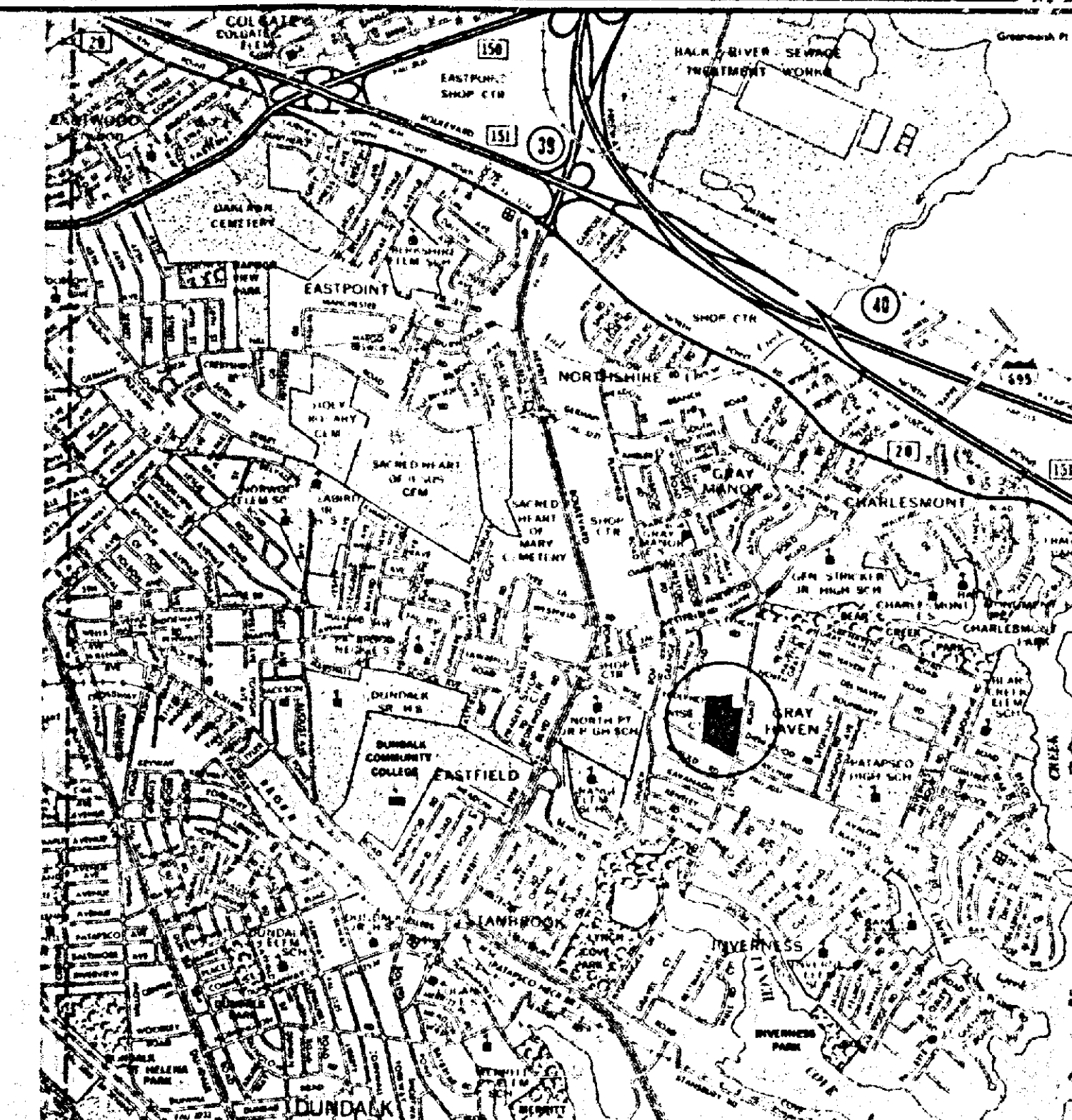
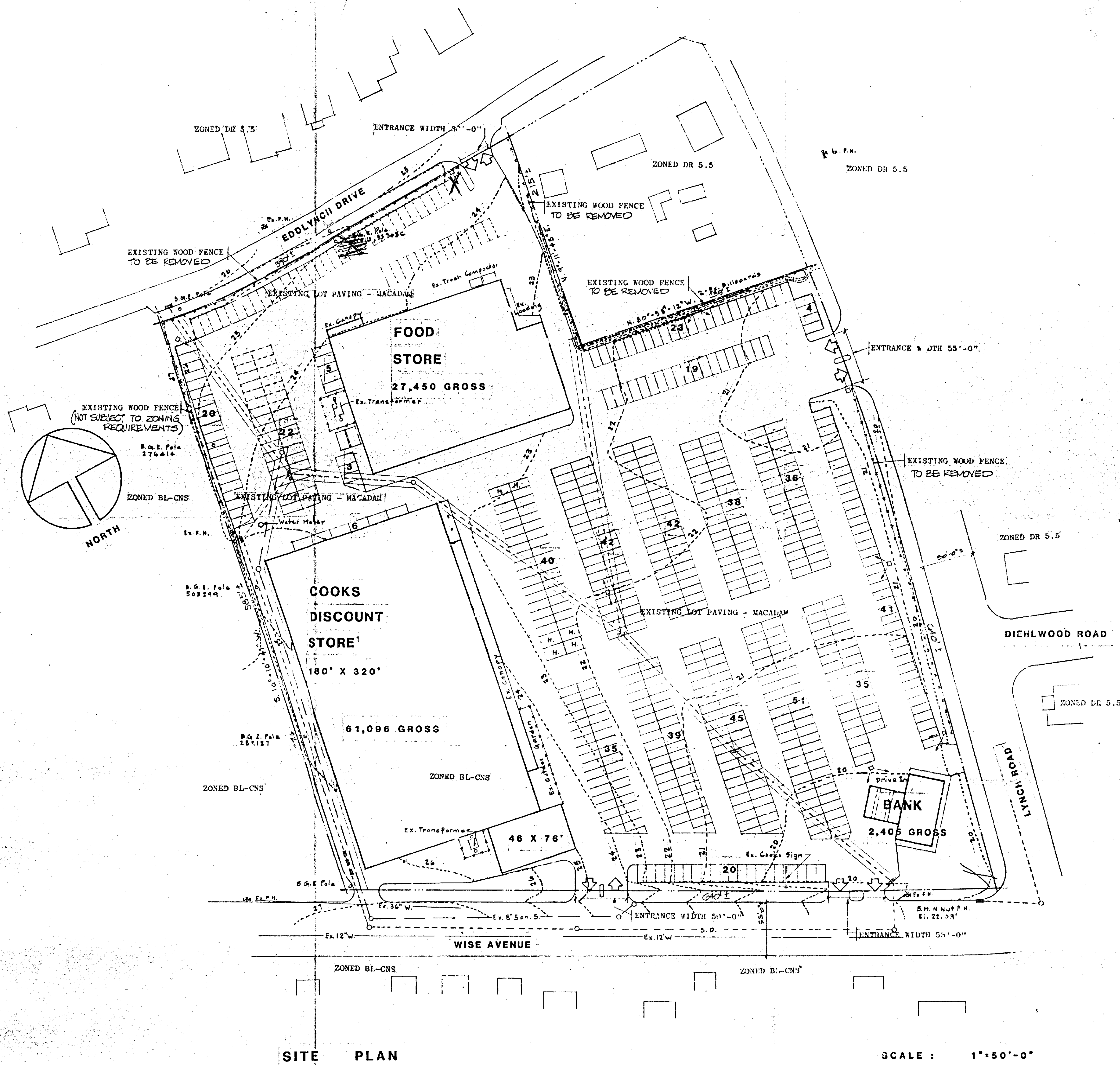
[Signature] Deputy Zoning Commissioner of Baltimore County

We, the undersigned, (Petitioners), respectfully request that Cook United, Inc., the new owners of the Wise Avenue, Lynch Road and Eddlynd Road Shopping Center, properly screen its off-street parking facilities in accordance with Section 409.2C(1) of the Baltimore County Zoning Regulations (Required screening for off-street parking). The property in question, having previously been owned by Food Fair Stores, Inc., was at issue in 1969 and 1970, resulting in a Decree dated March 3, 1970, signed by Judge John E. Raine, Jr., wherein the said Food Fair Stores, Inc. was directed to comply with the screening regulation. It is the feeling of the Petitioners that a deletion of said screening would not be in the best interests of the community and would adversely affect the health, safety, morals and general welfare of it. Further, the Petitioners request that reasonable commercial screening be provided.

Name	Address	Phone #	Date
Charles M. Bennett	7822 Eddlynd Rd	285-1226	3-3-82
John P. Bennett	7812 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7814 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7816 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7818 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7820 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7822 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7824 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7826 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7828 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7830 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7832 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7834 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7836 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7838 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7840 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7842 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7844 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7846 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7848 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7850 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7852 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7854 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7856 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7858 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7860 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7862 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7864 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7866 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7868 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7870 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7872 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7874 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7876 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7878 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7880 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7882 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7884 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7886 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7888 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7890 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7892 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7894 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7896 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7898 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7900 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7902 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7904 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7906 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7908 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7910 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7912 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7914 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7916 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7918 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7920 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7922 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7924 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7926 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7928 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7930 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7932 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7934 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7936 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7938 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7940 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7942 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7944 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7946 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7948 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7950 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7952 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7954 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7956 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7958 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7960 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7962 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7964 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7966 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7968 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7970 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7972 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7974 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7976 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7978 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7980 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7982 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7984 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7986 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7988 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7990 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7992 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7994 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7996 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	7998 Eddlynd Rd	285-1226	3-3-82
John C. Bennett	8000 Eddlynd Rd	285-1226	3-3-82

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Name	Address	Phone #	Date
James E. Murphy	7820 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7822 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7824 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7826 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7828 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7830 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7832 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7834 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7836 Eddlynd Rd	285-4676	3/1/82
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James E. Murphy	7840 Eddlynd Rd	285-4676	3/1/82
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James E. Murphy	7844 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7846 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7848 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7850 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7852 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7854 Eddlynd Rd	285-4676	3/1/82
James E. Murphy	7856 Eddlynd Rd	285	



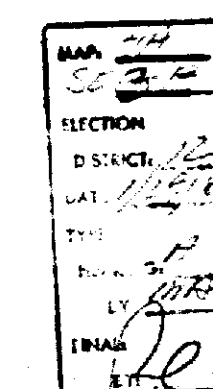
VICINITY PLAN

NO SCALE

LEGEND

Existing Zoning	B.L.	
Parking Required:		
Food Store	27,450 s.f. at 1/200	137
Cooks Store	61,096 s.f. at 1/200	305
Bank	2,405 s.f. at 1/200	13
	TOTAL	455 cars
Parking Provided (w/o dotted spaces)		566 cars
Parking Surplus (w/o dotted spaces)		109 cars
PARKING SPACE SIZE	9'-0" x 20'-0"	

PLAT FOR ZONING VARIANCE



82-201-A
Item #125

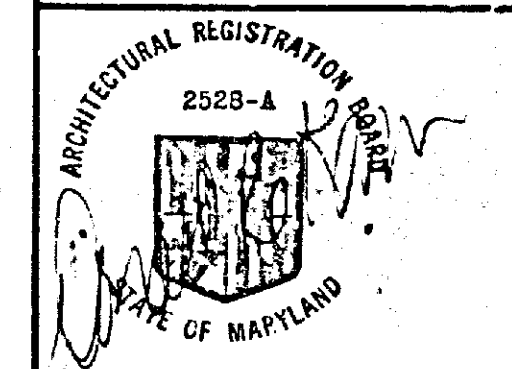
The information shown on this drawing is taken from a survey prepared by James S. Spaner and Associates Job No. 1055 dated revised 5/4/59. The Spaner drawing was amended in 1975 for the construction of a drive-in bank.

DISTRICT 12

KANN + AMMON, INC.
ARCHITECTS • PLANNERS • PRESERVATIONISTS
PLAZA SUITE, ONE INVESTMENT PLACE
TOWSON, MARYLAND 21204
301-828-6010
CONSULTANTS:



COOKS DISCOUNT STORE
WISE AVENUE
BALTIMORE COUNTY MARYLAND

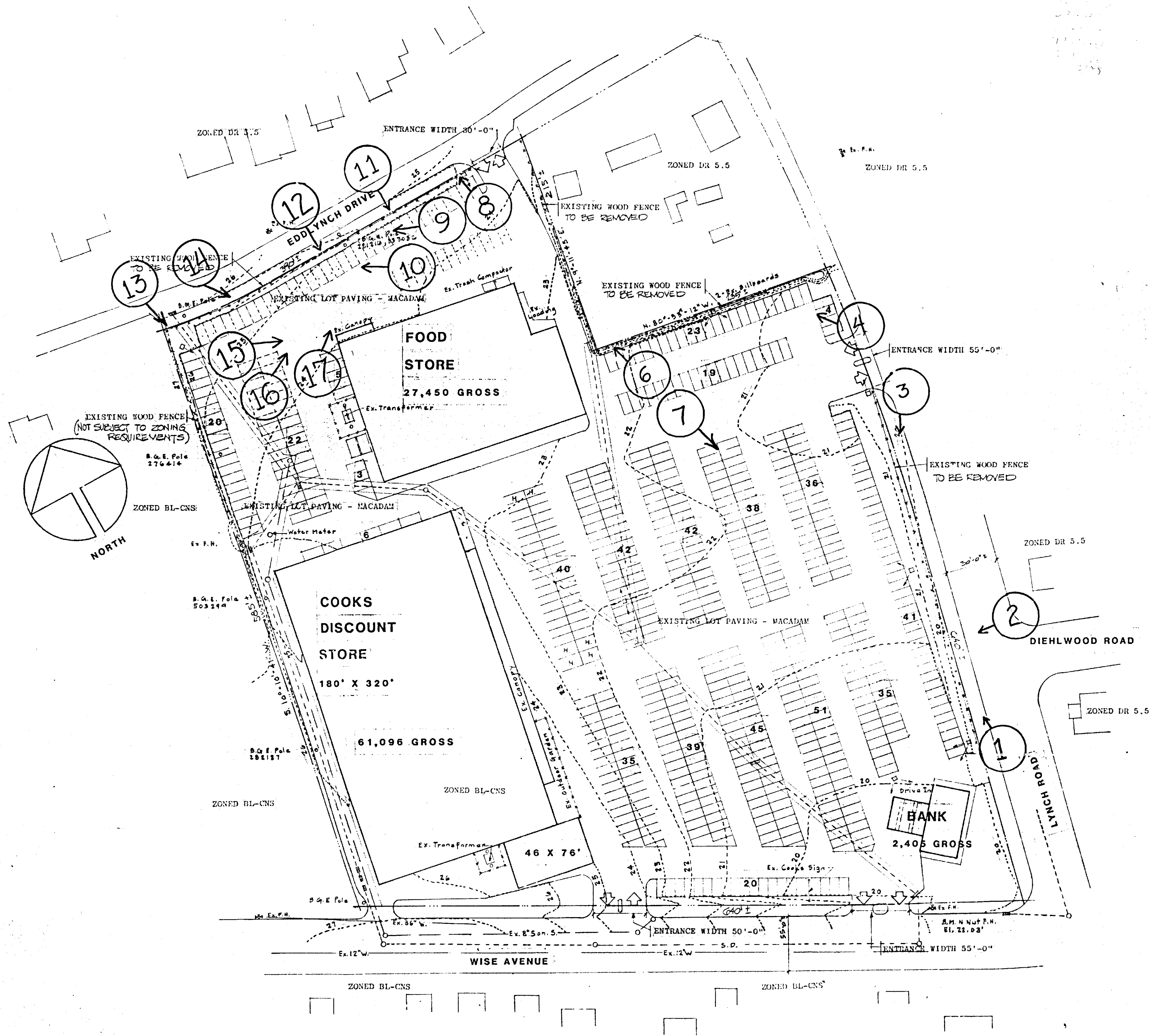


REVISIONS:
RELEASE FOR ZONING
VARIANCE, BALTIMORE
COUNTY
1-7-82

DATE: 11/2/81	PROJ. NO.: 81-04
DRAWN: JAA	CHECK:

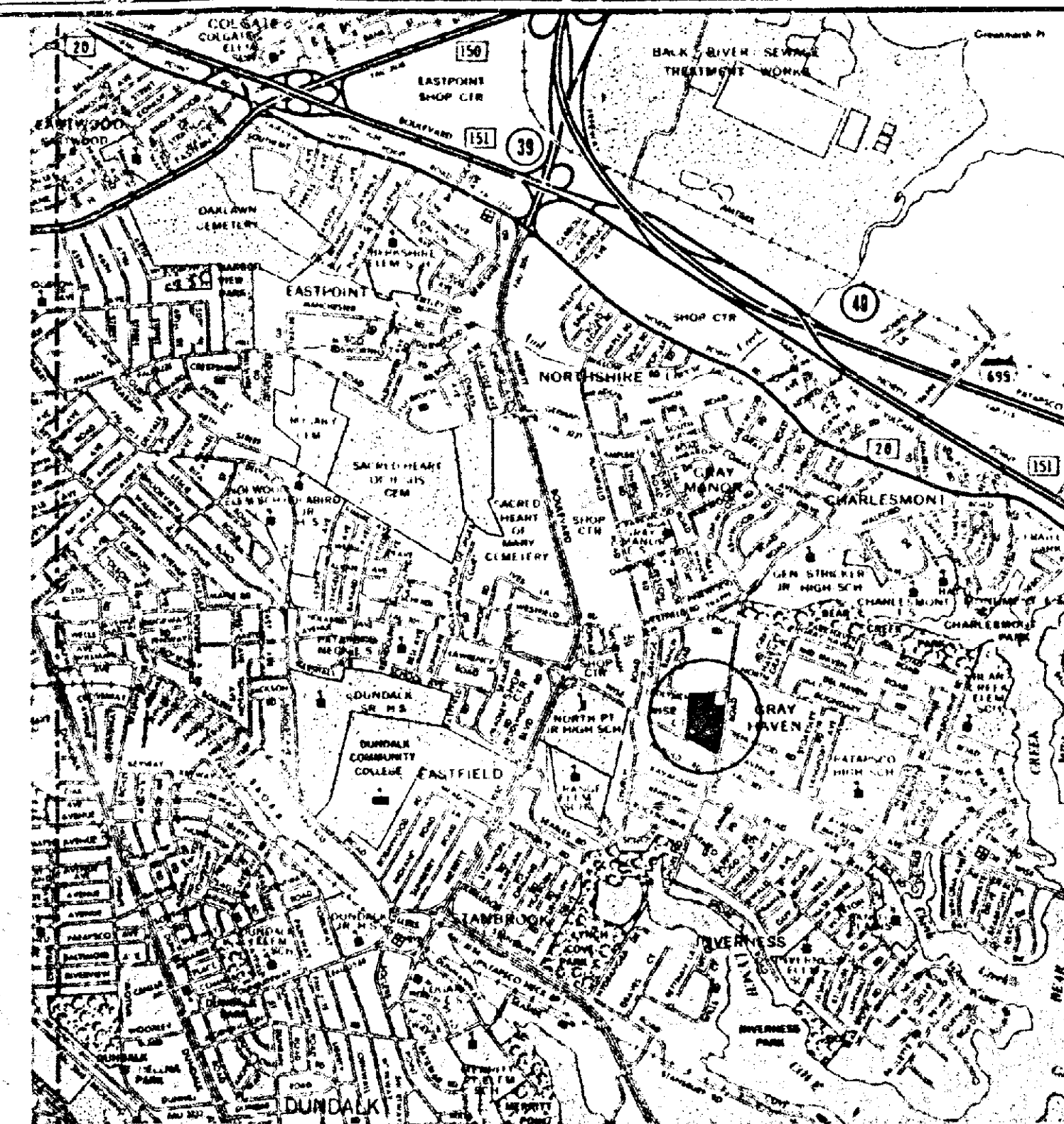
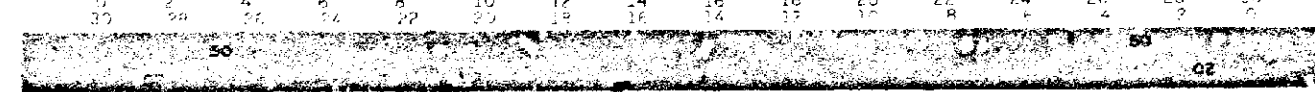
TITLE:
SITE PLAN
SCALE: 1" = 50'-0"

DRAWING NO.
SP-1
SHEET ONE OF ONE



SITE PLAN

SCALE : 1" = 50'-0"



VICINITY PLAN

NO SCALE

LEGEND

Existing Zoning -- B.L.

Parking Required:

Food Store	27,450 s.f. at 1/200	138
Cooks Store	61,096 s.f. at 1/200	306
Bank	2,405 s.f. at 1/200	13
	TOTAL	457 cars

Parking Provided (w/o dotted spaces) 566 cars

Parking Surplus (w/o dotted spaces) 109 cars

PARKING SPACE SIZE 9'-0" x 30'-0"

PLAT FOR ZONING VARIANCE

REVISIONS:
RELEASE FOR ZONING
VARIANCE, BALTIMORE
COUNTY
1-7-82

DATE: 11/2/81 PROJ. NO.: 81-04

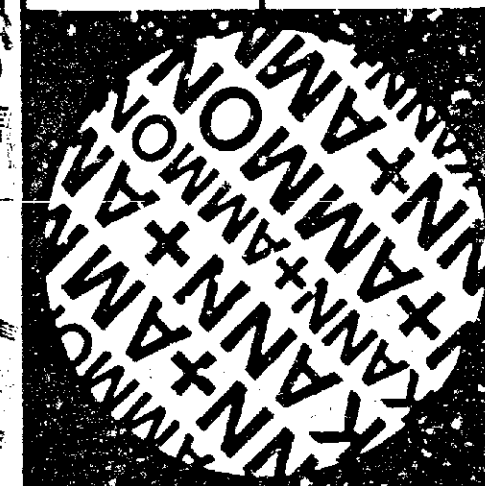
DRAWN: JAA CHECK:

TITLE:
SITE PLAN
SCALE: 1" = 50'-0"

DRAWING NO.
SP-1
SHEET ONE OF ONE

**COOKS
DISCOUNT STORE**
WISE AVENUE
BALTIMORE COUNTY MARYLAND

KANN + AMMON, INC.
ARCHITECTS • PLANNERS • PRESERVATIONISTS
PLAZA SUITE, ONE INVESTMENT PLACE
TOWSON, MARYLAND 21204
301-828-6010
CONSULTANTS:



Postcard
Exh. 2

The information shown on this drawing is taken from a survey prepared by James S. Spamer and Associates Job No. 1055 dated revised 5/1/59. The Spamer drawing was amended in 1975 for the construction of a drive-in bank.

DISTRICT 12

Name	Address	Phone #	Date
Helen Hall	7904 Dielwood Rd	285-0116	Mar 8, 1982
Robert J. Hall	7904 Dielwood Rd	285-1500	Mar 8-82
William J. Hall	7909 Dielwood Rd	385-0004	Mar 8-82
Stella H. Hall	7908 Dielwood Rd	285-5419	3/8/82
Offshore Becker	7900 Dielwood Rd	285-3037	3/8/82
Donald Beck	7910 Dielwood Rd	285-3037	3/8/82
Marie Becker	7911 Dielwood Rd	285-4253	3/8/82
Harold Jensen	7911 Dielwood Rd	285-4253	3/8/82
Carlson, Graham	7930 Dielwood Rd	282-3416	3/8/82
Pat Silbey	7928 Dielwood Rd	284-6602	3/8/82
J. B. Sambrandy	7926 Dielwood Rd	284-9213	3/8/82
Elizabeth Zichewski	7924 Dielwood Rd	284-9213	3/8/82
Charles Meyer	7916 Dielwood Rd	284-9213	3/8/82
Joe Meyer	7914 Dielwood Rd	284-5275	3/8/82
Robert Allen	7900 Dielwood Rd	285-1500	3/8/82
Gilbert Dielbeck	7902 Dielwood Rd	285-3512	3/8/82
Samuel Dielbeck	7917 Dielwood Rd	285-1500	3/8/82
Robert J. Scholt	7907 Dielwood Rd	282-2572	3/8/82
James J. Scholt	7915 Dielwood Rd	282-1106	3/8/82
Francis J. Scholt	7915 Dielwood Rd	282-1106	3/8/82
Mrs. L. C. Kammermayr	7917 Dielwood Rd	282-1106	3/8/82

NEG:JGH:rmc

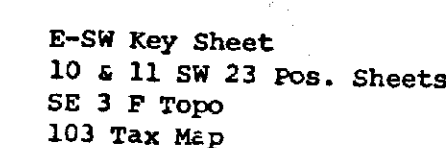
Name	Address	phone #	Date
Andie Ruth Funeral Home	7922 Laurel Pl	288-4664	3/16/82
Wm. M. Bauer	1724 Lynch Rd.	284-7217	3/20/82
C. Richard Bauer	1724 Lynch Rd	284-7217	3/20/82
Marion E. Randig	1718 Lynch Rd.	284-1084	3/21/82
Edwin F. Randig	1718 Lynch Rd.	284-1084	3/21/82
Jesse Acker	1716 Lynch Rd	284-1542 Baltimore Md 21222	3/22/82
Mary J Acker	1716 Lynch Rd	284-1542 Baltimore, Md	3/22/82
John J. Ballou	1722 Lynch Rd	282-3060	3/22/82
John J. Ballou	1722 Lynch Rd	282-3060	3/22/82

Petitioner's Attorney Bob Ross Hendricks, Esq. Reviewed by: Nicholas B. Commodari
Nicholas B. Commodari
Chairman, Zoning Plans
Advisory Committee

<u>Name</u>	<u>Address</u>	<u>Phone #</u>	<u>Date</u>
Raymond H. Long	2816 Dwyer Rd.	288-5211	3-8-82
Walter Long	1721 Ranch Ln.	288-4714	3-8-82
Edwin Lewis	1723 Birch Lane	284-6680	3-8-82
John M. MacLean	1714 Ranch Lane	284-3545	3-8-82
Norman M. Miller	1714 Ranch Lane	285-4070	3-8-82
Wm. J. Miller	1716 Ranch Lane	285-4716	3-8-82

Enclosures
cc: Mr. Robert McCormick
C/O Cook United, Inc.
165C1 Rockside Road
Maple Heights, Ohio 44131
Karn & Ammon, Inc.
One Investment Place
Towson, Md. 21204

EVALUATION COMMENTS	
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Enclosures
cc: Mr. Robert McCormick
C/O Cook United, Inc.
165C1 Rockside Road
Maple Heights, Ohio 44131
Karn & Ammon, Inc.
One Investment Place
Towson, Md. 21204



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
TOWSON, MARYLAND 21204
494-3211

NORMAN E. GERDER
DIRECTOR

March 1, 1982

Mr. William Hammond, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #128, Zoning Advisory Committee Meeting, January 26, 1982, are as follows:

Property Owner: Cook United, Incorporated
Location: NW corner Wise Avenue and Lynch Road
District: 12th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

This petition meets the requirements of the Division of Current Planning and Development.

Very truly yours,

John L. Wimbley
John L. Wimbley
Planner III
Current Planning and Development

JLW:rh

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond, Zoning Commissioner
TO: Office of Planning and Zoning Date: December 26, 1982
FROM: Ian J. Forrest
SUBJECT: Zoning Variance Items

The Baltimore County Department of Health has reviewed the following zoning variance items, and has no specific comments regarding same:

- Item #118 - Pasquale Bruno
- Item #120 - Burn Allen Stephenson
- Item #126 - Clarence and Irene McNeal
- Item #127 - Roy L. Chiavacci, et al
- Item #128 - Cook United, Incorporated
- Item #129 - Richard S. and Nancy D. Frank
- Item #131 - Harwood Realty Corp.
- Item #132 - Turnpike Associates

Ian J. Forrest
Ian J. Forrest, Director
BUREAU OF ENVIRONMENTAL SERVICES

IJF/eth



BALTIMORE COUNTY
FIRE DEPARTMENT
TOWSON, MARYLAND 21204
825-7310

PAUL H. REINCKE
CHIEF

February 24, 1982

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Cook United, Incorporated

Location: NW corner Wise Avenue and Lynch Road

Item No.: 128

Zoning Agenda: Meeting of January 26, 1982

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

() 1. Fire hydrants for the referenced property are required and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle dead end condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

() 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

() 6. Site plans are approved, as drawn.

(X) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWED BY: *Paul H. Reincke* Noted and Approved: *George M. McCormick*
Planning Group Fire Prevention Bureau
Special Inspection Division

/mb

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Nick Commodari
Ted Burnham
FROM: Zoning Advisory Committee
SUBJECT: Meeting of January 26, 1982

ITEM NO. #126	See Comments
ITEM NO. 127	See Comments
ITEM NO. 128	Standard Comments
ITEM NO. 129	Standard Comments
ITEM NO. 130	See Comments
ITEM NO. 131	See Comments
ITEM NO. 132	See Comments
ITEM NO. 133	Standard Comments

Ted Burnham
Ted Burnham
Plans Review Chief

rrj/

BALTIMORE COUNTY PUBLIC SCHOOLS

Robert Y. Dubel, Superintendent

Towson, Maryland - 21204

Date: January 22, 1982

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office Building
1111 West Chesapeake Avenue
Towson, Maryland 21204

Z.A.C. Meeting of: January 26, 1982

RE: Item No. 126, 127, 128, 129, 130, 131, 132, 133
Property Owner:
Location:
Present Zoning:
Proposed Zoning:

District:
No. Acres:

Dear Mr. Hammond:

All of the above have no adverse effect on student population.

Very truly yours,

Wm. Nick Petrovich
Wm. Nick Petrovich, Assistant
Department of Planning

WNP/bp
Cook
82-207-A
3/25



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

March 17, 1982

WILLIAM E. HAMMOND
ZONING COMMISSIONER

Rob Ross Hendrickson, Esquire
Sauerwein, Boyd, Decker & Levin
9 West Mulberry Street
Baltimore, MD 21201

RE: Petition for Variance
NW/cor. of Wise Ave. & Lynch Rd.
Cook United, Inc. - Petitioner
Case #82-207-A

Dear Mr. Hendrickson:

This is to advise you that \$62.50 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Maryland, and remit to Karen Riegel, Room 113, County Office Building, Towson, Maryland 21204 before the hearing.

Very truly yours,

William E. Hammond
WILLIAM E. HAMMOND
Zoning Commissioner

WEH:klr

Rob Ross Hendrickson, Esquire
Sauerwein, Boyd, Decker & Levin
9 West Mulberry Street
Baltimore, Maryland 21201

February 24, 1982

NOTICE OF HEARING

RE: Petition for Variance
NW/cor. of Wise Ave. & Lynch Rd.
Cook United, Inc. - Petitioner
Case #82-207-A

TIME: 2:30 P.M.

DATE: Thursday, March 25, 1982

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 1111 W. CHESAPEAKE AVENUE,

TOWSON, MARYLAND

cc: Robert McCormick
c/o Cook United, Inc.
16501 Rockside Road
Maple Heights, Ohio 44137

William E. Hammond
ZONING COMMISSIONER OF
BALTIMORE COUNTY

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

William E. Hammond
TO: Zoning Commissioner Date: March 10, 1982
Norman E. Gerber, Director
FROM: Office of Planning and Zoning
SUBJECT: Zoning Petition No. 82-207-A

In view of the petitioner's claims of vandalism and of the apparent back history of problems here, this office will not offer a comment on the subject matter.

Norman E. Gerber
Norman E. Gerber, Director
Office of Planning and Zoning

NEG:JGH:rmc

22-58
Thompson

J. COOKMAN BOYD, JR.
HENRY M. DECKER, JR.
WALTER S. LEVIN
FRANKLIN W. BENSON, JR.
ROB ROSS HENDRICKSON
SUSAN W. RUSSELL
DAVID K. HAYES
JAMES R. HENNEGAN
LEAH M. LEWIS

LAW OFFICES
SAUERWEIN, BOYD, DECKER & LEVIN
9 WEST MULBERRY STREET
BALTIMORE, MARYLAND 21201
AREA CODE 301
727-5770

JOSHUA W. MILES
COUNSEL
ALLAN SAUERWEIN 1975-1982
F. MURRAY BENSON 1982-1983

January 11, 1982

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office of
Planning and Zoning
Towson, Maryland 21204

Re: Cook United, Inc.
Case No. 82-143-V
and
Petition for Variance

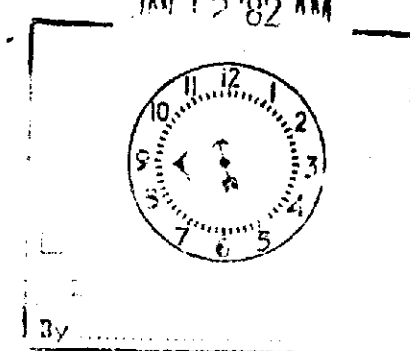
Item No. 128

Dear Mr. Hammond:

Pursuant to your request at the above violation hearing, and in line with your decision to suspend and finding in that regard for 90 days, I would request that prior to any date being set for the hearing on the variance, that your office be in touch with me to insure the availability of my client's representatives and myself on the proposed date of the hearing.

Respectfully,

Rob Ross Hendrickson



RRH/acg

cc: Mr. Jim Thompson

PETITION FOR VARIANCE

12th DISTRICT

ZONING: Petition for Variance
LOCATION: Northwest corner of Wise Avenue & Lynch Road
DATE & TIME: Thursday, March 25, 1982, at 9:30 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to waive the requirement that all off-street parking facilities, including drives be screened from off-site residential or institutional premises

The Zoning Regulation to be excepted as follows:

Section 409.2C(1) - Required screening for off-street parking

All that parcel of land in the Twelfth District of Baltimore County

Being the property of Cook United, Inc. as shown on plat plan filed with the Zoning Department

Hearing Date: Thursday, March 25, 1982 at 9:30 A.M.
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF
WILLIAM E. HAMMOND
ZONING COMMISSIONER
OF BALTIMORE COUNTY

PETITION FOR VARIANCE

12th DISTRICT

ZONING: Petition for Variance
LOCATION: Northwest corner of Wise Avenue & Lynch Road
DATE & TIME: Thursday, March 25, 1982, at 9:30 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Petition for Variance to waive the requirement that all off-street parking facilities, including drives be screened from off-site residential or institutional premises

The Zoning Regulation to be excepted as follows:

Section 409.2C(1) - Required screening for off-street parking

All that parcel of land in the Twelfth District of Baltimore County

Being the property of Cook United, Inc. as shown on plat plan filed with the Zoning Department

Hearing Date: Thursday, March 25, 1982 at 9:30 A.M.
Public Hearing: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

BY ORDER OF
WILLIAM E. HAMMOND
ZONING COMMISSIONER
OF BALTIMORE COUNTY

ZONING DESCRIPTION

Located at a point on the northwest corner of Wise Avenue and Lynch Road and running westerly along the north side of Wise Avenue 640' more or less, thence leaving the north side of Wise Avenue and running north 100° 10' 41" east 585' more or less to the south side of Eddlynn Drive, thence running easterly 390' more or less, thence leaving the south side of Eddlynn Drive and running South 9° 11' 45" west 215' more or less, thence south 80° 53' 12" east 235' more or less to the west side of Lynch Road, thence running south along Lynch Road 640' more or less to the place of beginning.

22-1050

ASSOCIATES
CHARLES E. FOOS, III
JOHN B. GONTRUM
JOHN D. HENNEGAN
ALFRED M. WALKER

ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(Baltimore Federal Building)
ESSEX, MARYLAND 21221

686-8274

June 14, 1982

Office of Planning and Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention: Ms. Jean M. H. Jung
Deputy Commissioner

Reference: Cook United, Inc.
Lynch Road

Dear Ms. Jung:

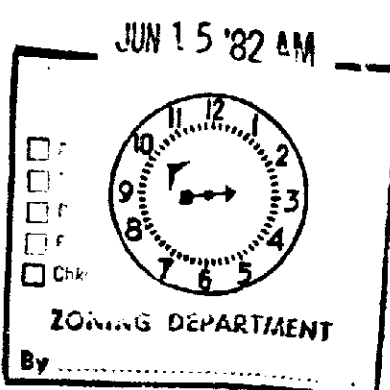
My clients have contacted me on several occasions to inquire as to the progress in the above referenced matter. Would you please advise us as to the status of the case and inform me as to what, if anything, I can do to be of assistance in order to expedite the proceedings.

Very truly yours,

John D. Hennegan

JOH/dlw

cc: Ms. Esther M. Berrent



22-53

J. COOKMAN BOYD, JR.
HENRY M. DECKER, JR.
WALTER S. LEVIN
FRANKLIN W. BENSON, JR.
ROB ROSS HENDRICKSON
SUSAN W. RUSSELL
DAVID K. HAYES
JAMES R. HENNEGAN
LEAH M. LEWIS

LAW OFFICES
SAUERWEIN, BOYD, DECKER & LEVIN
9 WEST MULBERRY STREET
BALTIMORE, MARYLAND 21201
AREA CODE 301
727-5770

JOSHUA W. MILES
COUNSEL
ALLAN SAUERWEIN 1975-1982
F. MURRAY BENSON 1982-1983

January 11, 1982

Mr. William E. Hammond
Zoning Commissioner
Baltimore County Office of
Planning and Zoning
Towson, Maryland 21204

Re: Cook United, Inc.
Case No. 82-143-V
and
Petition for Variance

Item No. 128

Dear Mr. Hammond:

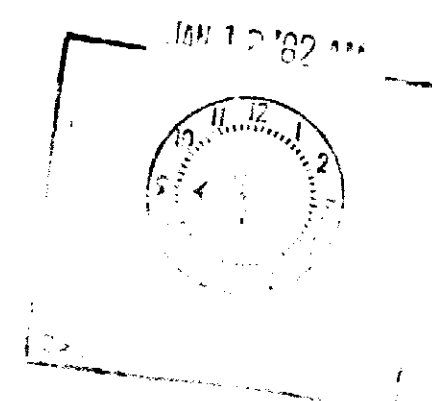
Pursuant to your request at the above violation hearing, and in line with your decision to suspend and finding in that regard for 90 days, I would request that prior to any date being set for the hearing on the variance, that your office be in touch with me to insure the availability of my client's representatives and myself on the proposed date of the hearing.

Respectfully,

Rob Ross Hendrickson

RRH/acg

cc: Mr. Jim Thompson



BALTIMORE COUNTY
OFFICE OF PLANNING & ZONING
TOWSON, MARYLAND 21204
494-3353

WILLIAM E. HAMMOND
ZONING COMMISSIONER

September 8, 1982

Rob Ross Hendrickson, Esquire
Sauerwein, Boyd, Decker & Levin
9 West Mulberry Street
Baltimore, Maryland 21201

RE: Petition for Variance
NW/corner of Wise Ave. & Lynch Rd. -
12th Election District
Cook United, Inc. - Petitioner
NO. 82-207-A (Item No. 128)

Dear Mr. Hendrickson:

I have this date passed my Order in the above captioned matter in accordance with the attached.

Very truly yours,

Jean M. H. Jung
Deputy Zoning Commissioner

JMHJ/mc

Attachments

cc: John Hennegan, Esquire
809 Eastern Boulevard
Baltimore, Maryland 21221

John W. Hessian, III, Esquire
People's Counsel

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

March 11, 1982

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

cc:

Nicholas B. Commodari
Chairman

MEMBERS

Bureau of
Engineering

Department of
Traffic Engineering

State Roads Commission

Bureau of
Fire Prevention

Health Department

Project Planning

Building Department

Board of Education

Zoning Administration

Industrial
Development

Rob Ross Hendrickson, Esquire
Sauerwein, Boyd, Decker & Levin
9 West Mulberry Street
Baltimore, Maryland 21201

RE: Item No. 128
Petitioner - Cook United, Inc.
Variance Petition

Dear Mr. Hendrickson:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

In view of your client's proposal to waive the screening requirements for his existing parking area, this variance is required. If the request is granted, screening would not be required along Eddlynn Drive, Lynch Road and the northeast property lines that abut the dwellings located at the southwest corner of these two roads.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

Nicholas B. Commodari, Esq.
NICHOLAS B. COMMODARI, Chairman
Zoning Plans Advisory Committee

NBC:bac

Enclosures

cc: Mr. Robert McCormick
C/O Cook United, Inc.
16501 Rockside Road
Maple Heights, Ohio 44137
Kann & Ammon, Inc.
One Investment Place
Towson, Md. 21204

HARRY J. PISTEL, P.E.
DIRECTOR

February 11, 1982

Mr. William E. Hammond
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Item #128 (1981-1982)
Property Owner: Cook United, Incorporated
N/W corner Wise Avenue and Lynch Road
Acres: District: 12th

Dear Mr. Hammond:

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

General:

Baltimore County highway and utility improvements exist and are not directly involved in regard to this property.

This office has no further comment in regard to the plan submitted for Zoning Advisory Committee review in connection with this item 128 (1981-1982).

Very truly yours,

Robert A. Morton, P.E.
ROBERT A. MORTON, P.E., Chief
Bureau of Public Services

RAM:EAM:FWR:SS

cc: Jack Wimbley

E-SW Key Sheet
10 & 11 SW 23 Pos. Sheets
SE 3 P Topo
103 Tax Map

NORMAN E. GERDER
DIRECTOR

March 1, 1982

Mr. William Hammond, Zoning Commissioner
Zoning Advisory Committee
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Dear Mr. Hammond:

Comments on Item #128, Zoning Advisory Committee Meeting, January 26, 1982, are as follows:

Property Owner: Cook United, Incorporated
Location: NW/Corner Wise Avenue and Lynch Road
District: 12th

This office has reviewed the subject petition and offers the following comments. These comments are not intended to indicate the appropriateness of the zoning in question, but are to assure that all parties are made aware of plans or problems with regard to development plans that may have a bearing on this petition.

This petition meets the requirements of the Division of Current Planning and Development.

Very truly yours,

John L. Wimbley
John L. Wimbley
Planner III
Current Planning and Development

JLW:rh

PAUL H. REINCKE
CHIEF

February 24, 1982

Mr. William Hammond
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, Maryland 21204

Attention: Nick Commodari, Chairman
Zoning Plans Advisory Committee

RE: Property Owner: Cook United, Incorporated

Location: NW corner Wise Avenue and Lynch Road

Item No.: 128

Zoning Agenda: Meeting of January 26, 1982

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and require to be corrected or incorporated into the final plans for the property.

() 1. Fire hydrants for the referenced property are required, and shall be located at intervals of _____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

() 2. A second means of vehicle access is required for the site.

() 3. The vehicle access condition shown at _____

EXCEEDS the maximum allowed by the Fire Department.

() 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

() 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1976 Edition prior to occupancy.

() 6. Site plans are approved, as drawn.

IX) 7. The Fire Prevention Bureau has no comments, at this time.

REVIEWED BY: *Patricia J. Kelly, 2/25/82*
Planning Group
Special Inspection Division

Noted and Approved:

George M. McDonnell
Fire Prevention Bureau

1mb
3/25
82-207-A

ZONING DESCRIPTION

Located at a point on the northwest corner of Wise Avenue and Lynch Road and running westerly along the north side of Wise Avenue 640' more or less, thence leaving the north side of Wise Avenue and running north 100' 10' 41" east 585' more or less to the south side of Eddlynn Drive, thence running easterly 390' more or less, thence leaving the south side of Eddlynn Drive and running south 90' 11' 45" west 215' more or less, thence south 80° 53' 12" east 235' more or less to the west side of Lynch Road, thence running south along Lynch Road 640' more or less to the place of beginning.

22 Md.App. 28
McRAE ANDERSON et al.

BOARD OF APPEALS, TOWN OF CHESAPEAKE BEACH, Maryland, et al.
No. 531.

Court of Appeals of Maryland

Appeal from an order of the Circuit Court, Calvert County, Perry G. Bowen, Jr., J., affirming a decision of town's board of appeals granting variances from town's zoning ordinance relating to distance between facade walls of buildings and granting special exception for multiple dwellings in commercial recreation district. The Court of Special Appeals, Davidson, J., held that zoning ordinance authorizing granting of an area variance only if strict application of ordinance regarding distance between buildings would result in practical difficulty and unnecessary hardship required that applicant also prove hardship and not merely proof of practical difficulties, and that board's action in granting variances without proof of hardship was arbitrary.

Reversed.

1. Zoning §503

An "area variance" is a variance from area, height, density, setback or side-line restrictions.

See publication Words and Phrases for other judicial constructions and definitions.

2. Zoning §502

A "use variance" is a variance permitting a use other than that permitted in particular district by zoning ordinance.

See publication Words and Phrases for other judicial constructions and definitions.

3. Zoning §502, 503

A use variance changes the character of the zoned district while an area variance does not.

4. Zoning §495

Use variances are customarily granted with hardship cases where the zoning ordinance and a variance may be permitted to avoid confiscatory operation of ordinance, while area variances are customarily concerned with practical difficulty.

5. Zoning §536

In order to obtain a use variance, applicant must prove that if he complies with ordinance he would be unable to secure a reasonable return from or make any reasonable use of property, that difficulties or hardships are peculiar to his property in contrast with other property in same district, and that hardship was not result of applicant's own actions.

6. Zoning §536

An applicant for an area variance does not have to show a taking in a constitutional sense but must show that compliance with strict letter of restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent him from using property for permitted purpose or render conformity with restrictions unnecessarily burdensome, that grant of variance would do substantial justice to applicant as well as to other property owners in district, that relief can be granted in such fashion that spirit of ordinance will be observed and public safety and welfare secured.

7. Zoning §536

Impact of an area variance is less drastic than that of a use variance so burden placed on one seeking area variance is less than burden placed on one seeking a use variance.

8. Zoning §538

Proof of practical difficulties alone is insufficient to justify granting of area variance under zoning ordinance prohibiting granting of use variance and allowing the granting of area variance only where strict application of ordinance would result in practical difficulty and unnecessary hardship depriving owner of reasonable use of lot for building involved.

9. Zoning §538

One who shows no more than that the granting of the variance would do no harm and that it would be profitable to him fails to meet burden of justifying granting of area variance under ordinance allowing the granting of an area variance only where strict application of ordinance would result in practical difficulty and unnecessary hardship.

10. Zoning §538

Where applicant for area variance presented only proof that strict application of zoning ordinance, which allowed area variance only where strict application of ordinance would result in practical difficulty and unnecessary hardship, would result in loss of profit and poor planning and evidence established that it was possible for applicant to develop land at maximum permitted density in accordance with ordinance and that such development would be less costly than mode of development proposed, action of town's board of appeals in granting variance was arbitrary and capricious.

11. Zoning §501

Where grant of special exception to erect multiple dwellings was conditioned on adherence to a site plan in which, absent variances, buildings were located in manner violative of zoning ordinance, special exception could not be sustained.

Eugene E. Petrof, Upper Marlboro, with whom were Duff & Stacey, Upper Marlboro, on the brief, for appellants.

Stacy H. Hoyer, District Heights, with whom were Hoyer & Fannon, District Heights, and Allen S. Handlen, Prince Frederick, on the brief, for appellees.

Argued before MOYLAN, JENCHINE and DAVIDSON, JJ.

DAVIDSON, Judge.

This appeal is from an order of the Circuit Court for Calvert County which affirmed a decision of the Board of Appeals of the Town of Chesapeake Beach granting variances from the town's zoning ordinance's requirement relating to minimum horizontal distance between facing walls of two buildings and granting a special exception for multiple dwellings in the MCR (Marine Commercial Recreation) district. After a careful review of the record, we find that the action of the Board of Appeals in granting the variances was arbitrary and capricious and should not be sustained. Because the special exception is conditioned on the placement of the buildings as shown on the site plan, and because that placement, absent the grant of the requested variances, is violative of the ordinance, the granting of the special exception should not be upheld.

On 26 May 1972 the Mayor and Town Council of Chesapeake Beach enacted a zoning ordinance for the town, which is located in Calvert County. Section 300 of the ordinance divides the town into six classes of districts, or zones, one of which was designated as the Marine Commercial Recreation (MCR) district. Sections 401(c) and 406 provide that multiple dwellings may be permitted in the MCR district if the Board of Appeals grants a special exception and certain other specified requirements are met. One such specified requirement, contained in § 406.2(b)(1),

relates to the minimum horizontal distance permitted between facing walls of any two buildings on one lot.

On 19 January 1973 Ronald W. Pickett, contract purchaser of the subject property and one of the appellees in this proceeding, filed an application for a zoning permit and an application for a special exception to develop 2.10 ± acres of land zoned MCR with 320 condominium apartment units and a 38,000 square foot convenience shopping center. A site plan was attached which indicated that in addition to the commercial facility the applicant proposed to build four apartment buildings, each nine stories high. Parking spaces were to be provided for 898 cars, with 640 spaces allocated to service the apartment dwellers and 258 to service the shopping center. An existing swimming pool, clubhouse and clubhouse were to be improved and retained for use by the residents of the proposed condominiums and four tennis courts were to be constructed for their enjoyment. All four buildings were to be positioned in a row along the edge of the Chesapeake Bay and were to be parallel to one another. The existing swimming pool and clubhouse lies between the proposed

sites of Building No. 1 and Building No. 2, which were to be separated by a distance of 100 feet. The distance between Building No. 2 and Building No. 3 was to be approximately 100 feet and the distance between Building No. 3 and Building No. 4 was to be approximately 100 feet. Section 406.2(b)(1) requires a minimum distance of about 250 feet between buildings of the height proposed.

On 7 February 1973 the application for a special exception and the accompanying site plan were reviewed by the Planning and Zoning Commission. The minutes of that meeting reflect that a member of the staff of the State Planning and Zoning Commission advised the Commission that only that variances were required because of non-compliance with § 406.2(b)(1) but also that the inclusion of a shopping area was violative of § 406.4. The Planning and Zoning Commission voted to recommend to the Board of Appeals that the proposed special exception be granted, "providing that all commercial buildings be deleted and that the Board of Appeals grant a variance for the non-compliance of distances between buildings." On 13 February 1973 the Board of Appeals received the following:

1. More specifically, § 406.2(b)(1) provides: "[W]here two (2) facing walls both contain a window or windows the minimum horizontal distance shall be three (3) feet of horizontal distance for each foot of average height of the facing wall of the building with greatest height but in no case less than twenty-five (25) feet"

Two witnesses testified with respect to the need for the requested variances. Mr. Ronald W. Pickett, the contract purchaser of the property, testified that the property, bounded on the west by Route 261 and the east by the Chesapeake Bay, is "very unique." It is "almost like an L shape" with the southern portion of the property being considerably narrower than the northern portion. Building No. 1 is located on Pool Hill, a hill which "slopes rather quickly down to the swimming pool." The location of Building No. 1 was dictated by the setback requirements of the ordinance and the slope of the hill, which together prohibited the placement of the building on any other spot. According to Mr. Pickett "there is no other way for us to locate that building We were locked in on the first building site, we virtually had no alternative if we were going to use that particular piece of property, Pool Hill. Because of the require-

ment of the ordinance and the dimensions of the building, that building had to go there."

The Planning and Zoning Commission accepts the plan submitted by Mr. Ron Pickett to construct four nine-story buildings on site of attached plan, providing you delete all commercial on said plan and that you grant a variance for the non-compliance of distances between buildings required in Section 406.2(b)(1)."

Thereafter Mr. Pickett filed an application for a variance alleging that:

"Due to the exceptional physical characteristics of the site a hardship is created by conforming to the 3' for 1' which would deprive me of the reasonable use of the land and buildings."

On 12 April 1973 a hearing was held before the Board of Appeals. The site plan submitted there deleted the proposed commercial use in its entirety, but the four proposed apartment buildings remained in approximately the same position they had occupied on the original site plan.

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which would interfere with the residents' view of the natural beauty of the shoreline. Either Building No. 3 would have to be located on the crown of the hill, making the building more visible from the road, or the crown of the hill would have to be removed to make the building less visible from the road, neither of which was a desirable mode of development. Finally, the principles of sound planning would be violated by the changes in the traffic patterns which would be required and which would result in residents from all the buildings driving in front of Building No. 3. Under the proposed site plan, mobile activity is confined to the rear of all the buildings.

Mr. Herbert Fleischer, an architect, engineer and planner, who had prepared the site plan for the subject property, qualified as an expert. He testified that the subject property had "intriguing natural beauty" with distinct contours and vegetation which should not be disturbed. He opined that the buildings are located so as to preserve the shoreline and indeed to enhance the view from the bay toward the project. He stated that although it would have been possible to place Building No. 3 in a different location, the plan as drawn maximized the permissible density while producing a "well-organized project." In his view, the four roughly parallel buildings are more in harmony with the appearance and character of Chesapeake Beach than a "staggered" layout would be. Moving the building to the west, behind Buildings No. 2 and No. 4, would mean building it in a "hole" behind the hill. In addition, a parking area would be required in front of the building which would have divided the planned open park recreation area. Such a parking lot would destroy the "resort" character of the project and create traffic hazards for pedestrians attempting to use it. Mr. Fleischer concluded his testimony on direct examination by stating that the grant of the requested variances would have no adverse effect on the residents of the buildings, the abutting property owners, the surrounding properties or the neighborhood of Chesapeake Beach. Indeed, in his

view, the development as planned would enhance the general area.

On recross-examination the following colloquy took place:

"Q. The only other question I would ask, can you tell the board what hardship would be suffered by your client if the variance was not granted?

"A. The only hardship would be the loss of income because you couldn't have the other buildings. You see, you have to approach it two ways. My opinion is, the density that we have is a low one, in my opinion.

"Q. If you would just try to answer the question directly, if you can, what hardship would you suffer if the variance is not granted?

"A. Maybe poor planning.

"Mr. Handen (Town Attorney for Chesapeake Beach): I think we have latted back and forth enough, gentlemen, it's got to come to an end."

On 18 April 1973 the Board of Appeals issued a written statement and decision. With respect to the request for variances, the Board of Appeals found, among other things:

"1. That, as a matter of fact, the variance requested will not be contrary to the public interest and that practical difficulties and unnecessary hardship would result if it is not granted.

"2. That, as a matter of fact, the Petitioner met the burden of proving the unique circumstances in that a strict application of the Zoning Ordinance would deprive the Petitioner of the reasonable use of his land and proposed buildings.

"3. That, as a matter of fact, the Petitioner met the burden of proving unnecessary hardship as required by the Ordinance in that to disallow the variance would impose a special hardship on the subject property.

"6. That, in addition to paragraphs numbered 1 through 5 above, the Board found as a fact that the granting of the variance was necessary for the reasonable use of the land and Petitioner's buildings; that the hardship complained was not economical nor self-created; that the hardship resulted from the application of the Ordinance and that the hardship would be specifically suffered by the property in question."

With respect to the special exception the Board of Appeals found:

"7. That, as a matter of fact, the special exception requested is consistent with the spirit, purpose and intent of the Ordinance.

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desire to use their land to the fullest extent, the need for the Variance is something they created and, therefore, it should not be considered. The Board, however, seemed to take the position that there was a problem created by the special topographic features and existing structures on this property, as well as its relation to the principal natural feature of the area; that is, the Chesapeake Bay, which entitled the Applicants to some consideration. Once again, this is a matter of judgment and in view of the evidence bearing on this question, the Court is satisfied that the Board had before it sufficient evidence to support the result it reached."

The appellants, McRae and Carmen Anderson, who opposed the granting of the application at the Board of Appeals hearing and appealed the Board's decision to the Circuit Court, contended that the zoning ordinance of the Town of Chesapeake Beach requires the applicant to show that a variance is necessary for the reasonable use of the land or building involved. They maintain that because this dual showing was not made, the action of the Board in granting the variances was arbitrary and capricious.

The Board of Appeals granted the variances and special exception subject to a condition, among others, "that petitioner must substantially adhere to matters of construction to the initial plans presented before the Board."

On 3 August 1973 the Circuit Court for Calvert County affirmed the grant of the variances and the special exception. With respect to the variances, the Court said:

"Finally, with respect to the granting of the Variance, the Appellate's position seems to be that because the Applicants'

statement and decision in a building form embodying the terms of the ordinance itself without setting forth any specific findings of fact, *See, e.g., Long v. City of Gaithersburg*, 270 Md. 628, 637, 313 A.2d 401, 402 (1974); *Isler v. Board of Trustees*, 292 Md. 710, 717, 398 A.2d 704, 713-714 (1979); *Isler v. Zoning Board*, 298 Md. 526, 530, 392 A.2d 614, 619 (1979); *Turner v. House and*, 270 Md. 31, 36, 310 A.2d 543, 551 (1973).

ings) and not a "use variance" (a variance which permits a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses). They maintain that area variances may be allowed on proof of "practical difficulty" alone and that such variances do not require a showing of "undue hardship." They insist that more than sufficient evidence was presented to make the question of whether practical difficulties would result from the denial of the requested variances "fairly debatable." They conclude that the action of the Board in granting the requested variances and the special exception should be upheld.

[3.5] The Court of Appeals has recognized a distinction between a use variance, which changes the character of the zoned district, and an area variance, which does not. Use variances are customarily concerned with "hardship" cases, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance, while area variances are customarily concerned with "practical difficulty." *Loyola Loan Ass'n v. Bushman*, 227 Md. 243, 248, 176 A.2d 355, 358 (1961). Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:

1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. *Pen Co. v. Baltimore City*, 231 Md. 372, 378, 196 A.2d 879, 882 (1964); *Marino v. City of Baltimore*, 215 Md. 206, 218, 137 A.2d 198, 202 (1957); *see Salisbury Bd. v. Bounds*, 240 Md. 547, 555, 214 A.2d 810, 815 (1965). Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. *Dahl v. County Board of Appeals*, 258 Md. 157, 167, 265 A.2d 227, 231 (1970); *Salisbury*

Bd. v. Bounds, *supra*, 240 Md. at 555, 214 A.2d at 814; *Marino v. City of Baltimore*, *supra*; *Easter v. City of Baltimore*, 195 Md. 395, 400, 73 A.2d 491, 492 (1950).

2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. *Burns v. Baltimore City*, 231 Md. 554, 559, 206 A.2d 163, 166 (1968); *Marino v. City of Baltimore*, *supra*; *Easter v. City of Baltimore*, *supra*.

3) The hardship was not the result of the applicant's own actions. *Salisbury Bd. v. Bounds*, *supra*; *Marino v. City of Baltimore*, *supra*; *Gleason v. Keswick Impvt. Ass'n*, 197 Md. 46, 50-51, 78 A.2d 164, 165-166 (1951).

[6.7] Where the standard of "practical difficulty" applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. In order to justify the grant of an area variance the applicant need show only that:

"1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

"2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

"3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." *McLean v. Soley*, 270 Md. 208, 214-215, 310 A.2d 783, 787 (1973), quoting 2 Rathkopf, *The Law of*

Zoning and Planning, 45-28-29 (3d ed. 1972).

The lesser burden of proof is required in such cases. *McLean v. Soley*, *supra*.

While a distinction between use and area variances has been recognized and clearly articulated in Maryland, the Court of Appeals has applied the "practical difficulty" standard to area variance applications in only three cases. *McLean v. Soley*, *supra*, 270 Md. at 213-214, 310 A.2d at 786-787; *Zengerle v. Bd. of Co. Comm'rs*, 262 Md. 1, 276 A.2d 646, 656 (1971); *Loyola Loan Ass'n v. Bushman*, *supra*, 227 Md. at 244-245, 176 A.2d at 358-359. In each of these the governing local ordinance authorized the grant of an area variance when strict compliance with the regulations would result in practical difficulties or unreasonable hardship. In each of them the Court of Appeals emphasized that the grant of the requested area variance was justified on proof of "practical difficulty" alone and that proof of hardship was not required because the governing zoning ordinance, which phrased the criteria of "practical difficulty or unreasonable hardship" in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied.

The zoning of Chesapeake Beach differs from those ordinances in a number of significant respects. Section 1005(c)(2) of the ordinance prohibits the Board of Appeals from granting a use variance. Section 1005(a) authorizes the Board to grant an area variance only where the strict application of the regulations "would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building involved." (Emphasis added.) Section 1005(c) provides that the applicant must show that "practical difficulty and unnecessary hardship will result if [the variance] is not granted." (Em-

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Zoning and Planning, 45-28-29 (3d ed. 1972).

The lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance.

While a distinction between use and area variances has been recognized and clearly articulated in Maryland, the Court of Appeals has applied the "practical difficulty" standard to area variance applications in only three cases. *McLean v. Soley*, *supra*, 270 Md. at 213-214, 310 A.2d at 786-787; *Zengerle v. Bd. of Co. Comm'rs*, 262 Md. 1, 276 A.2d 646, 656 (1971); *Loyola Loan Ass'n v. Bushman*, *supra*, 227 Md. at 244-245, 176 A.2d at 358-359. In each of these the governing local ordinance authorized the grant of an area variance when strict compliance with the regulations would result in practical difficulties or unreasonable hardship. In each of them the Court of Appeals emphasized that the grant of the requested area variance was justified on proof of "practical difficulty" alone and that proof of hardship was not required because the governing zoning ordinance, which phrased the criteria of "practical difficulty or unreasonable hardship" in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied.

The zoning ordinance of the Town of Chesapeake Beach permits area variances only. Not only does it express the criteria of practical difficulty and unnecessary hardship in the conjunctive, but it also independently requires that no area variance be granted unless it is shown that strict application of the regulations will deprive the applicant of the reasonable use of his land and that the grant of the variance is necessary for the reasonable use of the land. It defines the hardship which must be shown as the equivalent of a constitutional taking, and utilizes the same criteria employed by the Court of Appeals for establishing undue hardship. The words of the statute are clear and unambiguous and require no construction. Under the express terms of the ordinance, an area variance must be granted if the applicant can show that "practical difficulty and unnecessary hardship will result if [the variance] is not granted." (Em-

phasis added.) Section 1005(c) provides that the applicant must show that "practical difficulty and unnecessary hardship will result if [the variance] is not granted." (Em-

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ance can be granted only if there is proof that the strict application of the regulations would result in an unnecessary hardship which deprives the owner of the reasonable use of his land. Proof of "practical difficulties" alone is insufficient. *McLean*, *Zengerle* and *Loyola*, *supra*, are inapposite.

[9] Appellees do not contend that the applicant presented sufficient proof of an unnecessary hardship which deprived the owner of the reasonable use of his land. The record shows that the only hardship allegedly suffered by the applicant as a result of the strict application of the ordinance is "loss of profit" and "maybe poor planning." This evidence falls far short of a showing of unnecessary hardship as defined by the specific ordinance here involved as well as by the Court of Appeals. One who shows no more than that the granting of the variance would do no harm and that it would be profitable to him fails to meet the burden. *M. & C. C. v. Polakoff*, 233 Md. 1, 194 A.2d 819, 824 (1963). Moreover, the very testimony which shows the practical difficulties encountered in attempting to develop the land at a maximum density in accordance with the distance between buildings restriction simultaneously establishes unequivocally that not only is it possible to develop the land at the maximum permitted density in accordance with the distance between buildings requirement, but also that such development could be less costly than the mode of development proposed. Given the evidence presented on behalf of the applicant, it is impossible for him to contend that the strict application of the ordinance prevents him from making a reasonable use of his land.

[10.11] Based on the record before us, we find that the question of whether the strict application of the distance between buildings requirement would result in an unnecessary hardship to the applicant by depriving him of the reasonable use of his

land was not fairly debatable. *Baltimore v. Sapiro*, 230 Md. 241, 246, 186 A.2d 884, 887 (1962); *Marino v. City of Baltimore*, *supra*, 215 Md. at 222, 137 A.2d at 205. The action of the Board of Appeals in granting the variances was arbitrary and capricious and cannot be sustained. *Dahl v. County Bd. of Appeals*, *supra*, 258 Md. at 167, 265 A.2d at 232; *Dampman v. M. & C. C. of Baltimore*, 231 Md. 284, 286-287, 189 A.2d 631, 634 (1963). Because the grant of the special exception is conditioned on adherence to a site plan in which, absent the variances, the buildings are located in a manner violative of the ordinance, it too cannot be sustained. Accordingly, the order of the lower court affirming the grant of the variances and the special exception shall be reversed."

Order reversed. Costs to be paid by appellees.

22 Md.App. 90
SANITARY FACILITIES II, INC.
v.
John J. BLUM et ux. et al.
No. 755.
Court of Special Appeals of Maryland.
July 15, 1974.
Certiorari Denied Sept. 25, 1974.

Purchasers of lots brought a class action to remove a cloud on title. They were granted a summary judgment by the Circuit Court, Anne Arundel County, James L. Wray, Jr., and the defendant corporation appealed. The Court of Special Appeals, Moore, J., held that where a conveyance in the purchasers' chain of title was by "deed and agreement" which purported to subject the land to annual charges for sewer and water facilities to be installed, to be paid

6. In view of our decision all of the other contentions made by appellants need not be considered.

PROPERTY COST AND COMPUTATION STATUS INQUIRY FOR 07/02/82 TIME - 12:17:34
LIST ASSESSOR NO. DRAINING NO. EXEMPT TYPE
12-18-028430 12 1832 53-078-3

PROPERTY OWNER: LYNN HOLDING CO. MAILING ADDRESS: C/O ROGER CARPINE, EQUITABLE BANK CENTER, BALTIMORE, MD 21204

PROPERTY DESCRIPTION: 02843 WINE AV. NO. 100. MAP COR. LINDEN ROAD. 2-20-50 AC. SUPPLEMENTARY RECORD: 02843

SUBDIVISION: LOT 100. BLOCK 100. EASE. PAGE 111. L.L.R. TO L.D. TYPE 6374 0194 A

YR M SEW BEN YR M WAT BEN SEW SERV WAT DIS MTR SIZE NO OF MTR 56 242.00 36 187.00 576.18 225.00 603

FRONT BACK SIDE1 SIDE2 MAP BLK PARCEL ACREAGE AC NS WISE AV LOAN IMPV 00 00 00 103 12 00241 2.903 AC NS WISE AV YES

FORMER OWNER: SECOND FAIRLAND INC. TRANS DATE 03/03/82 TRANS NO 056399 FM DATE 82/03/11 DELETED

PRESS ENTER TO CONTINUE PRESS F2 TO END SESSION

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your Petition has been received this 7 day of July, 1972.

Filing Fee \$ 25.00 Received: [initials] Check [initials] Cash [initials] Other [initials]

PETITION FOR VARIANCE
12TH DISTRICT
LOCATION: Northwest corner of
Wise Avenue & Lynch Road
DATE & TIME: Thursday, March
25, 1982, at 9:30 A.M.
PUBLIC HEARING: Room 106,
County Office Building, 111 W.
Chesapeake Avenue, Towson,
Maryland 21204
The Zoning Commissioner of Baltimore
County, by authority of the
Zoning Act and Regulations of Baltimore
County, will hold a public
hearing.
Petition for Variance to waive the
requirement that all off-street parking
facilities, including drives be
screened from off-site residential
or institutional premises.
The Zoning Regulation to be ex-
cepted as follows:
Section 409.2C(1)-Required screening
for off-street parking.
All that parcel of land in the Twelfth
District of Baltimore County
located at a point on the northwest
corner of Wise Avenue and Lynch Road
and running westerly along the north side
of Wise Avenue and Lynch Road and
running north 10° 10' 41" east 585
more or less to the south side of
Edgelych Drive, thence running
easterly 380' more or less, thence
leaving the south side of Edgelych
Drive and running South 9° 11' 45"
west 215' more or less, thence South
80° 52' 12" east 235' more or less to
the west side of Lynch Road, thence
running south along Lynch Road 640'
more or less to the place of
beginning.
Being the property of Cook United,
Inc. as shown on plat filed with the
Zoning Department.
Hearing Date: Thursday, March
25, 1982, at 9:30 A.M.
Public Hearing: Room 106, County
Office Building, 111 W. Chesapeake
Avenue, Towson, Maryland
By Order of
WILLIAM E. HAMMOND,
Zoning Commissioner
of Baltimore County
Mar. 4

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 4, 1982

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on one time ~~successive weeks~~ before the 25th day of March, 1982, the 1st publication appearing on the 4th day of March, 1982.

THE JEFFERSONIAN,
Manager.

Cost of Advertisement, \$

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ZONING COMMISSIONER
OF BALTIMORE COUNTY

CERTIFICATE OF PUBLICATION

OFFICE OF
Dundalk Eagle

38 N. Dundalk Ave.
Dundalk, Md. 21222

March 5, 1982

THIS IS TO CERTIFY, that the annexed advertisement of William Hammond, zoning commissioner Balto county in matter of petition of Cook United, Inc. hearing was inserted in The Dundalk Eagle a weekly news-

paper published in Baltimore County, Maryland, once a week

for ~~successive weeks~~ before the

5th day of March, 1982; that is to say,

the same was inserted in the issues of

March 5, 1982

Kimbel Publication, Inc.

Publisher.

By Kimbel J. Calha

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Dundalk Eagle

38 N. Dundalk Avenue 288-6060
Dundalk, Maryland 21222

Dundalk, Md. March 5, 1982

Baltimore County, Md.
Office of Central Services
Suite 412 Courts Bldg.
401 Dole Ave.
Towson, MD 21204

ADVERTISING/COPIES - Karen Reigel
FOA- 3768, Reg. L 33232, Feb. 24, 1982
Petition for Variance- Cook United, Inc.
NW/cor of Wise Ave. & Lynch Rds.
Hearing Thurs. March 25, 1982
Issue March 4, 1982 --- 90 lines - \$ 31.50

certificate of publication attached - copy of
bill & cert pub sent to Karen Reigel this date

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 12 Date of Posting: 3/7/82
Posted for: Petition for Variance
Petitioner: Cook United, Inc.
Location of property: NW/cor of Wise Ave. & Lynch Rd.
Location of Signs: Posting in Towson, Md. NW/cor of Wise Ave. & Lynch Rd.
Remarks: 2 signs
Posted by: Karen Reigel Date of return: 3/12/82

No. 106823

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE: 3/23/82 ACCOUNT: 01-662
AMOUNT: \$62.50
RECEIVED: Shawcross, Rob Reigel & Jervis
FOR: Posting & Advertising of Case # 32-207-A (Cook United)

62.50 AM

No. 105718

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE: 2/23/82 ACCOUNT: 01-662
AMOUNT: \$25.00
RECEIVED: Rob Reigel & Jervis
FOR: Posting fee for case # 32-207-A (Cook United)

25.00 AM

